

molecular weight of about 600,000 daltons and hydroxypropylmethylcellulose and that such compositions anticipate the original claims.

Applicants respectfully traverse this rejection. The Sander et al. reference does not teach or suggest Applicants' inventive subject matter as a whole as recited in the amended claims.

The U.S. Supreme Court in *Graham v. John Deere Co.*, 148 USPQ 459 (1966) held that non-obviousness was determined under § 103 by (1) determining the scope and content of the prior art; (2) ascertaining the differences between the prior art and the claims at issue; (3) resolving the level of ordinary skill in the art.

Sander et al. at best provides a composition suitable to affect bone repair comprising from about 64 to about 94% by weight of biocompatible particles formed from a methacrylate coated with another methacrylate, with the particles dispersed in from about 6 to about 36% by weight of a matrix selected from the group comprising cellulose ether, collagen, hyaluronic acid, a hyaluronic acid salt, and esters of hyaluronic acid and a hyaluronic acid salt, in a liquid medium.

In contrast to the referenced subject matter, it should be noted that Applicants' inventive matter does not require any biocompatible particles formed from methacrylates dispersed within its matrix. Applicants' inventive matter also does not include, as a part of its matrix, collagen or esters of hyaluronic acid and hyaluronic acid salts.

Furthermore, cellulose ethers taught by Sander et al. do not include hydroxyethyl cellulose or hydroxypropyl cellulose, both of which are nonionic polymers that are essential to Applicants'

inventive matter.

Unlike the Sander et al. reference, Applicants' inventive subject matter includes a sterilized, purified, long acting drug composition which further includes the following essential embodiments:

1. a clear, stable, storable solution in both soluble and suspended form;

2. an active therapeutic drug; and

3. a polymer matrix,

4. wherein the polymer matrix consists essentially of negatively charged polymers and nonionic polymers at a ratio of 1:0.5 to 2.0, and in a preferred embodiment, at a ratio of 1:0.8 to 1.5, and

5. wherein the negatively charged polymers are selected from the group consisting of polysulfated glucosoglycans, glucosaminoglycans, mucopolysaccharides and mixtures thereof; the nonionic polymers are selected from the group consisting of carboxymethylcellulose sodium, hydroxyethylcellulose, hydroxypropylcellulose and mixtures thereof.

6. In the most preferred embodiment, the negatively charged polymer is a hyaluronic acid salt, and the nonionic polymer is hydroxyethylcellulose.

None of these essential embodiments are taught or suggested by the Sander et al. reference. It is readily apparent that none of the embodiments of the Sander et al. reference suggest Applicants' inventive subject matter as a whole. There is therefore no disclosure of facts in the prior art which support a legal conclusion that the claimed invention was obvious at the time it

was made. It is a well settled principle that prior patents are references only for what they clearly disclose or suggest and that it is not proper use of a patent as a reference to modify its structure to one which the reference does not suggest.

The provisions of Section 103 must be followed realistically to develop the factual background against which the Section 103 determination must be made. All of the facts must be considered and it is not realistic within the framework of Section 103 to pick and choose from any one reference only so much as will support a given position to the exclusion of other parts necessary for the full appreciation of what such reference fairly suggests to one of ordinary skill in the art. Accordingly, withdrawal of the Sander et al. reference is respectfully requested.

2. Rejection of Claims 1, 3-5, and 7-14 under 35 U.S.C. 103(a) as being unpatentable over Leshciner et al.

As basis for the rejection, the Examiner contends that Leshciner et al. disclose biocompatible viscoelastic two-phase gel slurries wherein the first phase comprises hyaluronic acid and its salts, and wherein the second phase comprises cellulose derivatives such as carboxymethylcellulose, hydroxypropylmethylcellulose, and hydroxyethylcellulose. The Examiner further contends that Leshciner et al. disclose that these two-phase gel slurries may contain drugs and may exist in an aqueous solvent.

Applicants respectfully traverse this rejection. The Leshciner et al. reference does not teach or suggest Applicants' inventive subject matter as a whole as recited in the amended claims.

At best, Leshciner et al. disclose a two-phase mixture. The

two-phase mixture includes a gel phase and a second aqueous phase. This reference does not teach or suggest a single phase system that is storage stable.

It should also be noted that the Leshciner et al. gel phase comprises at least two chemically cross linked polymers, where at least one is a glycosaminoglycan. The aqueous phase comprises a water-soluble polymer selected from the group consisting of polysaccharides, polyvinylpyrrolidone and polyethyleneoxide. This is not Applicants' inventive subject matter.

To avoid repetition, Applicants hereby incorporate by reference the remarks presented above with regard to the distinguishing features of Applicants' inventive subject matter. None of the embodiments of the Leshciner et al. reference teach or suggest Applicants' inventive subject matter as a whole. In addition, and in complete contrast to the Leshciner et al. reference, it should be emphasized that Applicants' inventive subject matter comprises single-phase, and stable formulations. Because these formulations are homogenous, clear solutions, they may be stored for several years and maintain their novel utility. Such an advantage is not taught by Leshciner et al.. Accordingly, withdrawal of the Leshciner et al. reference and allowance of the claims is respectfully requested.

3. Examiner's consideration of Applicants' previous arguments with respect to claims 1, 3-5, and 7-14.

Applicants respectfully thank the Examiner for her consideration of Applicant's previous arguments regarding the previous grounds of rejection of claims 1, 3-5, and 7-14 and the withdrawal of the references relied upon.

CONCLUSION


Based upon the above amendments and remarks, the presently claimed subject matter is believed to be novel and patentably distinguishable over the prior art of record. The Examiner is therefore respectfully requested to reconsider and withdraw the rejections of claims 1, 3-5, and 7-14 and allow all pending claims presented herein for reconsideration. Favorable action with an early allowance of the claims pending in this application is earnestly solicited.

The Examiner is welcomed to telephone the undersigned attorney if she has any questions or comments.

Respectfully submitted,

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